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SECTION: STATE & LOCAL CASE FILE: Safety and Health.

TITLE: NONSMOKERS MAY SUE EMPLOYERS, APPEALS COURT PRECEDENT RULES.

TEXT:

The Washington State Court of Appeals rules in favor of a woman who sued her public employer for negligence when she developed pulmonary disease after being exposed to the smoke of coworkers. Saying the plaintiff's case is not preempted by the state Industrial Insurance Act, the court holds that Helen McCarthy, in her appeal of an order of the state superior court, had a claim upon which relief can be granted.

This is the first ruling of its kind in the nation, said Carolyn McVicker, director of marketing for the Smoking Policy Institute in Seattle, a nonprofit organization that assists corporations in resolving problems created by smoking in the workplace. McVicker said previous cases involving sidestream smoke in the workplace have been civil suits in which the best settlement for a plaintiff was for the employer to create a smoke-free workplace.

McCarthy was employed by the state Department of Social and Health Services (DSHS) from February 1970 to December 1980 in an office environment in which she was regularly exposed to "cigarette and other kinds of tobacco smoke," according to McCarthy's complaint. She told her supervisor and an assistant director at DSHS that she was concerned about health effects of the smoke.

Obstructive Lung Disease

"Notwithstanding her complaints and the department's awareness of her 'pulmonary problems,' the department negligently failed to provide McCarthy with a safe and healthful place of employment and an office environment reasonably free of tobacco smoke," the court says. She developed obstructive lung disease, which became progressively more serious.

After quitting her job in December 1980, McCarthy sought industrial insurance benefits for her condition. The state Department of Labor and Industries denied her claim, but she appealed the decision to the state Board of Industrial Insurance Appeals.

The board upheld the denial of benefits, concluding her disease was not the result of an industrial injury. Nor did it constitute an occupational disease under the state Industrial Insurance Act, the board said.

Directly Sue Employers

However, the appeals court rules that McCarthy had a common law action for negligence. "If we were to hold otherwise, McCarthy would have effectively

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fallen into a 'crack' between the state industrial insurance system and the state's tort system," it says.

"This decision creates the opportunity for employees harmed by sidestream smoke to directly sue their employer for damages," said the Smoking Policy Institute in a statement issued after the ruling.

"This case dramatically increases the potential liability of corporations that fail to protect the health and safety of their employees," according to Robert Rosner, executive director of the institute.

(McCarthy v. State of Washington Department of Social and Health Services; Wash CtApp No. 7667-5-11, Dec. 8, 1986.)

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